

Senate Bill 278

By: Senators Schaefer of the 50th, Brown of the 26th, Shafer of the 48th, Rogers of the 21st, Pearson of the 51st and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile proceedings, so as to provide that juvenile deprivation hearings shall not be closed except upon the written application of the parents, guardians, or custodians of the child or children who are the subject of the hearing; to provide that efforts shall be made to place children with relatives prior to transferring custody of such children to the Department of Human Resources; to provide for notices and procedures; to provide for trial by jury in cases involving the termination of parental rights; to provide for the manner of selection of such juries; to provide for waiver; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile proceedings, is amended by revising subsection (a) of Code Section 15-11-58, relating to reasonable efforts regarding reunification of family, as follows:

"(a) A court's order removing a child from the child's home shall be based upon a finding by that court that continuation in the home would be contrary to the welfare of the child.

If the court places custody of the child in the Division of Family and Children Services of the Department of Human Resources, the court shall also determine as a finding of fact whether reasonable efforts were made by the Division of Family and Children Services of the Department of Human Resources and any other appropriate agencies to preserve and reunify families prior to the placement of a child in the custody of the Department of Human Resources, to prevent or eliminate the need for removal of the child from that child's home, and to make it possible for the child to return safely to the child's home.

Prior to being placed in foster care, the child must be placed in a relative's care unless there is no relative who is willing and able to care for the child. The Division of Family and Children Services must show that a registered letter requesting family placement was

1 mailed to each and every relative that the parent, guardian, or custodian of the child
2 provided to the division and whether reasonable efforts were made to place the child in a
3 relative's home prior to the placement of that child in the custody of the Department of
4 Human Resources. Such findings shall also be made at every subsequent review of the
5 court's order under this chapter.

6 (1) In determining reasonable efforts to be made with respect to a child, as described in
7 this subsection, and in making such reasonable efforts, the child's health and safety shall
8 be the paramount concern;

9 (2) Except as provided in paragraph (4) of this subsection, reasonable efforts shall be
10 made to preserve and reunify families:

11 (A) Prior to the placement of a child in the custody of the Department of Human
12 Resources, to prevent or eliminate the need for removing the child from the child's
13 home; and

14 (B) To make it possible for a child to return safely to the child's home;

15 (3) If continuation of reasonable efforts of the type described in paragraph (2) of this
16 subsection is determined to be inconsistent with the permanency plan for the child,
17 reasonable efforts shall be made to place the child in a timely manner in accordance with
18 the permanency plan and to complete whatever steps are necessary to finalize the
19 permanent placement of the child;

20 (4) Reasonable efforts of the type described in paragraph (2) of this subsection shall not
21 be required to be made with respect to a parent of a child if a court of competent
22 jurisdiction has determined that:

23 (A) The parent has subjected the child to aggravated circumstances which may include
24 but need not be limited to abandonment, torture, chronic abuse, and sexual abuse; or

25 (B) The parent has:

26 (i) Committed murder of another child of the parent;

27 (ii) Been convicted of the murder of the other parent of the child;

28 (iii) Committed voluntary manslaughter of another child of the parent;

29 (iv) Aided or abetted, attempted, conspired, or solicited to commit murder or
30 voluntary manslaughter of another child of the parent; or

31 (v) Committed a felony assault that results in serious bodily injury to the child or
32 another child of the parent; ~~or~~

33 ~~(C) The parental rights of the parent to a sibling have been terminated involuntarily;~~

34 (5) If reasonable efforts of the type described in paragraph (2) of this subsection are not
35 made with respect to a child as a result of a determination made by a court of competent
36 jurisdiction in accordance with paragraph (4) of this subsection:

(A) A permanency hearing in accordance with subsection (o) of this Code section shall be held for the child within 30 days after such determination; and

(B) Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(6) Reasonable efforts to place a child for adoption or with a legal guardian ~~may~~ shall not be made concurrently with reasonable efforts of the type described in paragraph (2) of this subsection."

SECTION 2.

Said chapter is further amended by revising Code Section 15-11-78, relating to exclusion of public from juvenile hearing and exceptions, as follows:

"15-11-78.

(a) Except as otherwise provided by subsection (b) of this Code section, the general public shall be excluded from hearings involving delinquency, ~~deprivation~~, or unruliness. Only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and any other persons as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of his or her delinquency or unruly conduct are being heard.

(b) The general public shall be admitted to:

(1) An adjudicatory hearing involving an allegation of a designated felony pursuant to Code Section 15-11-63;

(2) An adjudicatory hearing involving an allegation of delinquency brought in the interest of any child who has previously been adjudicated delinquent; provided, however, the court shall close any delinquency hearing on an allegation of sexual assault ~~or any delinquency hearing at which any party expects to introduce substantial evidence related to matters of deprivation;~~

(3) Any child support hearing;

(4) Any hearing in a legitimation action filed pursuant to Code Section 19-7-22; ~~or~~

(5) At the court's discretion, any dispositional hearing involving any proceeding under this article; or

(6) Any deprivation hearing except upon the written application of the parents, guardian, or custodian of the child or children who are the subject of the hearing."

SECTION 3.

Said chapter is further amended by revising Code Section 15-11-94, relating to grounds for termination of parental rights, as follows:

"15-11-94.

(a) In considering the termination of parental rights, the ~~court~~ trier of fact shall first determine whether there is present clear and convincing evidence of parental misconduct or inability as provided in subsection (b) of this Code section. If there is clear and convincing evidence of such parental misconduct or inability, the ~~court~~ trier of fact shall then consider whether termination of parental rights is in the best interest of the child, after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including the need for a secure and stable home. If the ~~court~~ trier of fact finds clear and convincing evidence of the circumstance provided in paragraph (5) of subsection (b) of this Code section, the ~~court~~ trier of fact shall presume that termination of parental rights is in the best interest of the child. The parent shall have a right to a trial by a jury of six persons who shall sit as the trier of fact unless the parent waives such right to a jury in writing and agrees to permit the court to sit as the trier of fact in the case. The jury shall be selected using the same procedure as for the selection of a six person jury in state court civil actions under Code Section 15-12-122. If the parent waives trial by jury and consents to a trial before the court, the court shall issue an order within 30 days after the conclusion of the trial.

(b) Except as provided in subsections (e) through (h) of Code Section 15-11-96, the court by order may terminate the parental rights of a parent with respect to the parent's child if:

(1) The written consent of the parent, acknowledged before the court, has been given; provided, however, that acknowledgment before the court is not necessary where the parent or parents voluntarily surrender the child for adoption as provided by subsection (e) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7;

(2) ~~A~~ The trier of fact finds that a decree has been entered by a court of competent jurisdiction of this or any other state ordering the parent, guardian, or other custodian to support the child, and the parent, guardian, or other custodian has wantonly and willfully failed to comply with the order for a period of 12 months or longer;

(3) The trier of fact finds that the parent has abandoned the child or the child was left under circumstances such that the identity of the parent is unknown and cannot be ascertained despite diligent searching, and the parent has not come forward to claim the child within three months following the finding of the child;

(4)(A) The ~~court~~ trier of fact determines parental misconduct or inability by finding that:

(i) The child is a deprived child, as such term is defined in Code Section 15-11-2;

(ii) The lack of proper parental care or control by the parent in question is the cause of the child's status as deprived;

(iii) Such cause of deprivation is likely to continue or will not likely be remedied; and

(iv) The continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.

(B) In determining whether the child is without proper parental care and control, the ~~court~~ trier of fact shall consider, without being limited to, the following:

(i) A medically verifiable deficiency of the parent's physical, mental, or emotional health of such duration or nature as to render the parent unable to provide adequately for the physical, mental, emotional, or moral condition and needs of the child;

(ii) Excessive use of or history of chronic unrehabilitated abuse of intoxicating liquors or narcotic or dangerous drugs or controlled substances with the effect of rendering the parent incapable of providing adequately for the physical, mental, emotional, or moral condition and needs of the child;

(iii) Conviction of the parent of a felony and imprisonment therefor which has a demonstrable negative effect on the quality of the parent-child relationship;

(iv) Egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, emotionally, or sexually cruel or abusive nature;

(v) Physical, mental, or emotional neglect of the child or evidence of past physical, mental, or emotional neglect of the child or of another child by the parent; and

(vi) Injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.

(C) In addition to the considerations in subparagraph (B) of this paragraph, where the child is not in the custody of the parent who is the subject of the proceedings, in determining whether the child is without proper parental care and control, the ~~court~~ trier of fact shall consider, without being limited to, whether the parent without justifiable cause has failed significantly for a period of one year or longer prior to the filing of the petition for termination of parental rights:

(i) To develop and maintain a parental bond with the child in a meaningful, supportive manner;

(ii) To provide for the care and support of the child as required by law or judicial decree; and

(iii) To comply with a court ordered plan designed to reunite the child with the parent or parents; or

(5) The trier of fact finds that the parent has been convicted of the murder of the child's other parent.

(c) If the court does not make an order of termination of parental rights, it may grant an order under Code Section 15-11-55 if the ~~court~~ trier of fact finds from clear and convincing evidence that the child is a deprived child.

(d) If the trier of fact does not find that a parent's parental rights should be terminated, another action to terminate such parent's parental rights shall not be brought unless the action relates to a new allegation or new information."

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.